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RON CURRY
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Deputy Secretary

November 2, 2007

Ms. Sally Smith
President, GRIP
305A N. Cooper Street
Silver City, New Mexico 88061

Re: NMED response to letter listing concerns dated August 31, 2007

Dear Ms. Smith:

The New Mexico Environment Department (NMED) writes this letter in response to your letter dated August 31, 2007. The format of this letter lists the GRIP question/concern in italic print followed by the NMED response in Normal print.

AOC/Discharge Permit Overlap: pros and cons, examples.

The AOC investigates potential impacts from historic mining operations in the Investigation Area while the Discharge Permits pertain to active mining operations. The AOC states "However, to avoid duplication of environmental closure activities to the extent that the Investigation Area is subject to existing Discharge Plans, those Discharge Plans shall not be incorporated into this AOC and shall continue to govern compliance with applicable provisions of the New Mexico Water Quality Act."

This being said, it is prudent that NMED staff understand potentially overlapping issues and address those appropriately.

AOC, NMED and EPA funding: What is the annual budget for the AOC process? How much funding is received by NMED and EPA to participate?

The annual budget for the Chino AOC is made up of three components – Chino's internal and contractor costs, NMED oversight costs and EPA oversight costs. Chino's costs from the effective date of the AOC to date total \$32,000,000.00. The NMED receives funding annually based on projected work to be completed. NMED has received an average of \$137,220.00 per fiscal year (FY 1995-FY2007); the 2008 fiscal year funding is \$226,000.00. The EPA receives \$63,440.00 per year for oversight costs.



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AOC Financial Assurance: *Has the financial assurance status needs to be updated re: PD merger with Freeport McMoRan?*

As required by Section XX.A.2 of the AOC, Chino established a trust fund in December of 1997 to fulfill their financial assurance obligations. NMED will review the existing documents and determine if financial assurance will be required to be revised.

AOC/Superfund Comparison: *The AOC commits to a "Superfund quality" clean-up at the Chino mine. Over the past ten years, has AOC processes, deliverables, and interim cleans up been comparable to Superfund clean ups?*

The AOC states that documents, such as the Remedial Investigation, Feasibility Study and Remedial Action Plan, will be consistent with the National Contingency Plan (NCP-CERCLA-Superfund). Documents have been prepared following Environmental Protection Agency Guidance and Interim Remedial Actions have been completed through the use of EPA approved remedial alternatives.

EPA Role: *Describe EPA involvement over ten years. Has it been altered significantly?*

The EPA role in the Chino AOC has always been one of technical assistance to the NMED; that is to say that the EPA reviews documents and submits comments for document revision. There have been instances when a timely response did not occur due to limited resources, but overall the EPA role has not changed.

TAG Fund status: *How much has of the fund been used to date and what is remainder in the budget? Where is this funding located? Describe to newer members what the fund is for.*

The "Technical Assistance Grant" is a resource fund (initially \$50,000.00) provided by CMC for the purpose of obtaining services that would assist the CWG in learning about or provide input to work being performed under the AOC. The CWG may enter into a contract with a firm for AOC related issues; the firm will submit their invoice to Chino and Pam will route the payment through Project R0600021.

There have been two payments tracked in project R0600021 - Technical Assistance Grant for a total of \$8,717.82, the balance remaining is \$41,282.18.

CWG: *How effective has the CWG been? How has the CWG affected the process?*

The Community Relations Plan required the formation of the Community Work Group in an effort to share AOC information with community members and solicit input. This has certainly happened as you are aware; the attendees receive up-to-date AOC information at each meeting which aids the CWG in providing input to issues as they arise. As far as "affecting the process", the CWG meetings provide an alternative avenue for stakeholder input into the process.

Time Frame and Scheduling: *What have been the causes of delays to the schedule? Is there a revised schedule for a Record of Decision (hard copy suggested)? Is there a negotiation process for changes in schedules?*

Various factors have caused delays which include the requirement for collection of additional data, weather and disputes over proposed cleanup levels.

The AOC has no rigid time schedule as it is driven by the requirement of having sufficient data to base decisions on risk and establishing cleanup standards, although some document framework is in place, such as, "Once data is validated the report must be submitted in ninety (90) days" or revision of a document may take fifteen (15) or thirty day (30) depending on the document type.

The draft ROD(s) will be presented ninety days (90) after their respective Feasibility Study has been approved.

There is no "negotiation process" but Chino may ask for an extension of a due date. This has occurred a couple times but the extensions have been very short (i.e., one week or a couple days to allow for delivery).

AOC/Penalties for late submissions: *Are there penalty fees if the deliverable schedule is not met? Have any fines been levied to date?*

Yes; Section VIII, of the AOC, addresses penalties which could be \$250.00 or \$1000.00 a day depending on the document. Chino has not been assessed with any AOC related penalties.

Public Forum: *What are the guidelines, NMED concerns, and best use for the public forums?*

There is no mention of a "public forum" in the AOC; however, a Section discusses Community Information Meetings (CIM). Through the thirteen years of the AOC the CMI has developed into the "Open House". The best use of the public forums is to exchange information.

Also, the AOC requires a public meeting when the draft ROD is available.

Open House Policy: *What are the guidelines, number to date and effectiveness? What are the advertising requirements for open houses?*

As stated above, the "Open House" developed from the CIM. The CRP states "Community meetings will be held twice per year and upon issuance of the record or decision. Community meetings may also be scheduled at other times deemed appropriate by NMED and CMC (Chino Mines Company)." Early Project Managers (George Schuman, NMED, and Robert Quintanar, CMC) agreed that information accumulated slowly and that the Open House should be scheduled as needed. That is the current policy; the last "Open House" I recall was held in the fall of 2005 when the residents of Hurley were presented with the details of the Soil Removal Interim Remedial Action and allowed to ask questions and view maps of the potential remediation.

The August 2007 CWG meeting, with the presentation of the H/WCIU Human Health Risk Assessment, could have been listed as an "Open House" considering the personal invitations that were mailed out.

Advertising should be in the local media two weeks prior to the event.

AOC Updates and Member Information and updating process: What are the guidelines for updating the CWG on AOC progress? What are the guidelines for educating new CWG members about the process and actions? How effective has the current process been for updating the CWG? Are there ways to improve the process?

There is no written guidance for updating the CWG members, nor guidance to educate new members. It is very difficult to determine if the process is working; the information is available to members, but there are no tests to determine if members can recall the mountains of information. With that said, since the CWG meetings are informal and ample time is provided for questions and answers, it is believed that this is sufficient to provide necessary information to existing as well as new members.

Community Relations Plan: What does the CRP say? Is the CRP being followed? Is the CRP up to date? Does it need to be revised?

The intent of the CRP is to provide opportunities for the community to learn about the project, provide the opportunity for public input on the draft ROD, and develop at least one TAG to assist the community to learn about and provide informed input into work to be preformed under the AOC. The CRP is a relatively short document (eight pages) which one can refer to for specifics.

The CRP is being followed and is working as demonstrated by the sharing of information at each CWG meeting and open house and through mailings of pertinent information.

Newsletters: What are the guidelines for developing and distributing newsletters to the public? How many have been produced to date? Have they been effective? Can the newsletters be improved and how?

The AOC CRP states "CMC will produce a community newsletter to assist in the dissemination of information to community members." Three newsletters have been distributed to date. Other information, relating to the Hurley soils removal, has been distributed in similar fashion. The NMED assumes that this process is effective; however, no positive or negative feedback has been received.

Health Advisory: How effective is The Health Advisory for the Hurley soils clean-up process? Was there any follow up to see if the Advisory was followed? Are the conditions in the amendment to the AOC being followed? What happen to household information gathered by CMC?

It is unknown how effective the Health Advisory was since a house to house survey was not conducted. The intent of the Health Advisory was to provide the information to the public so individuals could make an informed decision. No phone calls or letters requesting further information were received by the NMED.

Chino Mines Company complied with the requirements of the AOC Amendment; the Hurley household information was collected by CMC and is part of their business files.

Other Amendments to the AOC: What are the amendments to the AOC? Have they been effective? Are additional amendments necessary?

Presently, the only amendment to the AOC is the Amendment dated and signed July 28, 2005 regarding the soil remedial action criteria of 5000 ppm in the town of Hurley. Other amendments are not anticipated at this time.

Lead Education: What are the requirements for lead education including the duration for education programming? How effective has the lead education been?

There is no lead education program.

Interim Actions: What are the pros and cons of implementing interim actions as opposed to a Record of Decision?

Interim Remedial Actions (IRAs) are designed to address immediate or time-critical problem areas as they are discovered and understood. Therefore, implementation of IRAs remove the risk quickly rather than postponing the effort through the documentation process (i.e., risk assessment, feasibility study, ROD, remedial design and remedial action). IRAs do not eliminate the ROD; although they might reduce or eliminate further Remedial Action.

If you need further assistance you may contact me at 388-1934.

Sincerely,

Phil Harrigan
Chino AOC Project Manager
Mining Environmental Compliance Section
Ground Water Quality Bureau
New Mexico Environment Department
Silver City Field Office

Cc: Mary Ann Menetrey, NMED
Jerry Schoeppner, NMED
Mark Purcell, US EPA